FILED
JAN 31 1956
HAROLD S. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955

No. 500

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., etc., *Petitioner*,

v.

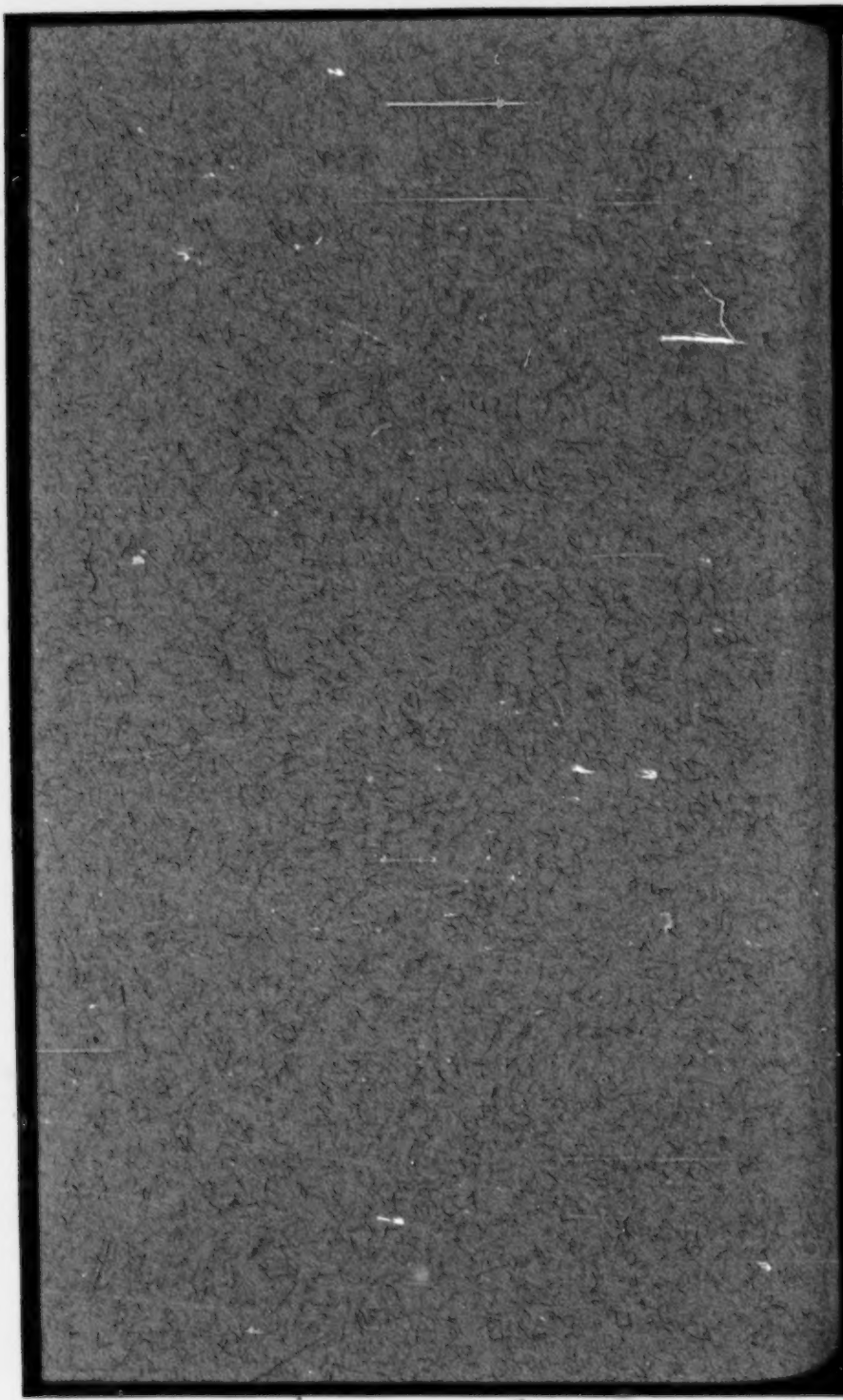
HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian, and IVY BAKER PRIEST, Treasurer of the United States, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI

ROGER J. WHITEFORD
JOHN J. WILSON
PHILIP S. PEYSER
Attorneys for Petitioner

Press of Byron S. Adams, Washington, D. C.



IN THE

Supreme Court of the United States

October Term, 1955

No. 500

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., etc., *Petitioner,*

v.

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian, and IVY BAKER PRIEST, Treasurer of the United States, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI

Comes now the petitioner and petitions this Honorable Court for a rehearing of the order of January 9, 1956, denying its petition for a writ of certiorari to review a judgment and decision of the United States Court of Appeals for the District of Columbia Circuit.

Petitioner moves that action on this petition for rehearing be deferred until a reasonable time after the expiration of six months after the date of the filing of the mandate of the Court of Appeals in the District Court.

This action, instituted by petitioner Swiss corporation under the Trading with the Enemy Act for the recovery of practically all of the stock of a large American corporation, was dismissed by the District Court for failure to comply with a discovery order for the production, in Switzerland, of all of the records of a private Swiss bank alleged to be under the control of petitioner. Although 63,000 documents were produced after obtaining waivers and consents under the Swiss secrecy laws, the District Court dismissed the action with prejudice, because of failure to produce *all* of such documents. In affirming the decision of the District Court, the United States Court of Appeals for the District of Columbia Circuit modified the order of dismissal to the extent of allowing petitioner six additional months in which to produce the documents, the concluding paragraph of its opinion being as follows:

> "One modification, however, we deem advisable, namely, that dismissal of the complaint with prejudice shall not become effective until six months after the receipt by the District Court of the mandate of this court in this case, and not then if within such period discovery is made as ordered. This will afford another opportunity to bring the case on for a trial and decision on the merits."*

Thus, the order of dismissal was conditional and may never become finally effective. The case may not now

---

* The judgment of the Court of Appeals provides as follows:
"On consideration whereof, It is ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed, provided, however, that if within six months after the receipt by the District Court of the mandate of this Court in this case discovery shall be made as required by the District Court, then the order dismissing the complaint shall be vacated by the District Court."

be ready for consideration, and, indeed, may never require consideration by this Court. Upon the assumption that the modification by the Court of Appeals may have been the reason for the denial of the petition for certiorari, this petition for rehearing is being filed.

If petitioner is able to perform the discovery within the allotted time, dismissal will not occur. Under such circumstances, it would be unnecessary to review the decisions of the lower courts in this case. It was in this posture that the petition for certiorari came before the Court in this case. The mandate of the Court of Appeals was filed in the District Court on January 19, 1956, and the six-months' period has begun to run. Petitioner is making every effort to comply with the discovery order, and it is possible that it may succeed. If it does, the threat of dismissal will disappear. If it does not succeed, dismissal will be *final* in every sense of the word, and the posture of the case, as described above, will be changed. No alternative to final dismissal will then exist. This court may then have a different view of the matter.

Petitioner is asking this Court to retain jurisdiction in the meantime over the application for certiorari. It is believed that this is the only method by which this may be accomplished under the circumstances. *Compare, Barsky* v. *United States*, 334 U.S. 843 (October Term 1947—petition for certiorari denied June 14, 1948), and same case, 339 U.S. 971 (October Term 1949—petition for rehearing denied May 29, 1950.)

Respectfully submitted,

ROGER J. WHITEFORD
JOHN J. WILSON
PHILIP S. PEYSER
Attorneys for Petitioner

Certificate of Counsel

The undersigned counsel for petitioner hereby certify that this petition is presented in good faith, and that it is not presented for delay in the ordinary sense since no delay is contemplated in respect of the mandate upon the judgment of the Court of Appeals. Counsel also certify that this petition is restricted to the grounds specified in rule 58(2) of this Court.

ROGER J. WHITEFORD

JOHN J. WILSON

PHILIP S. PEYSER
Attorneys for Petitioner

January 31, 1956.